

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ENRIQUE NUNES LOPEZ,
Petitioner,
v.
JOSIE GASTELO, Warden,¹
Respondent.

Case No. [19-cv-05788-DMR](#) (PR)

ORDER TO SHOW CAUSE

Petitioner, a state prisoner, has filed this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner has paid the full filing fee. Dkt. 1. This action has been assigned to the undersigned Magistrate Judge.

Pursuant to 28 U.S.C. § 636(c), with written consent of all parties, a magistrate judge may conduct all proceedings in a case, including entry of judgment. Appeal will be directly to the United States Court of Appeals for the Ninth Circuit. *See* 28 U.S.C. § 636(c)(3).

On October 18, 2019, Petitioner consented to magistrate judge jurisdiction in this matter. Dkt. 6.

It does not appear from the face of the petition that it is without merit. Good cause appearing, the court hereby issues the following orders:

1. The Clerk of the Court shall serve a Magistrate Judge jurisdiction consent form, a copy of this Order, as well as the signed petition (dkt. 4) and all attachments thereto upon Respondent and Respondent's attorney, the Attorney General of the State of California. The Clerk shall also serve a copy of this Order on Petitioner at Petitioner's current address.

2. Within **twenty-eight (28) days** of the issuance of this Order, Respondent shall

¹ Josie Gastelo, the current warden of the prison where Petitioner is incarcerated, has been substituted as Respondent pursuant to Rule 25(d) of the Federal Rules of Civil Procedure.

1 complete and file the Magistrate Judge jurisdiction consent form to indicate whether Respondent
2 consents or declines to proceed before the assigned Magistrate Judge. Respondent is free to
3 withhold consent without adverse consequences. If Respondent consents to a Magistrate Judge's
4 jurisdiction, this case will be handled by the undersigned Magistrate Judge. If Respondent
5 declines, the case will be reassigned to a District Judge. Whether Respondent consents or declines
6 to proceed before the assigned Magistrate Judge, the parties shall abide by the briefing schedule
7 below.

8 3. Respondent shall file with this court and serve upon Petitioner, within **sixty (60)**
9 **days** of the issuance of this Order, an Answer conforming in all respects to Rule 5 of the Rules
10 Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be issued.
11 Respondent shall file with the Answer a copy of all portions of the relevant state records that have
12 been transcribed previously and that are relevant to a determination of the issues presented by the
13 petition.

14 4. If Petitioner wishes to respond to the Answer, Petitioner shall do so by filing a
15 Traverse with the court and serving it on Respondent within **twenty-eight (28) days** of
16 Petitioner's receipt of the Answer. Should Petitioner fail to do so, the petition will be deemed
17 submitted and ready for decision **twenty-eight (28) days** after the date Petitioner is served with
18 Respondent's Answer.

19 5. Respondent may file with this court and serve upon Petitioner, within **sixty (60)**
20 **days** of the issuance of this Order, a motion to dismiss on procedural grounds in lieu of an
21 Answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules Governing Section
22 2254 Cases. If Respondent files a motion to dismiss, Petitioner shall file with the court and serve
23 on Respondent an opposition or statement of non-opposition to the motion within **twenty-eight**
24 **(28) days** of receipt of the motion, and Respondent shall file with the court and serve on Petitioner
25 a reply within **fourteen (14) days** of receipt of any opposition.

26 6. It is Petitioner's responsibility to prosecute this case. Petitioner must keep the
27 court and Respondent informed of any change of address and must comply with the court's orders
28 in a timely fashion. Pursuant to Northern District Local Rule 3-11 a party proceeding *pro se*

1 whose address changes while an action is pending must promptly file a notice of change of
2 address specifying the new address. *See* L.R. 3-11(a). The court may dismiss a *pro se* action
3 without prejudice when: (1) mail directed to the *pro se* party by the court has been returned to the
4 court as not deliverable, and (2) the court fails to receive within sixty days of this return a written
5 communication from the *pro se* party indicating a current address. *See* L.R. 3-11(b); *see also*
6 *Martinez v. Johnson*, 104 F.3d 769, 772 (5th Cir. 1997) (Rule 41(b) applicable in habeas cases).
7 Petitioner must also serve on Respondent's counsel all communications with the court by mailing
8 a true copy of the document to Respondent's counsel.

9 7. Upon a showing of good cause, requests for a reasonable extension of time will be
10 granted provided they are filed on or before the deadline they seek to extend.

11 IT IS SO ORDERED.

12 Dated: October 24, 2019

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15 DONNA M. RYU
16 United States Magistrate Judge
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ENRIQUE NUNES LOPEZ,
Plaintiff,
v.
TAMMY FOSS,
Defendant.

Case No. [4:19-cv-05788-DMR](#)

CERTIFICATE OF SERVICE

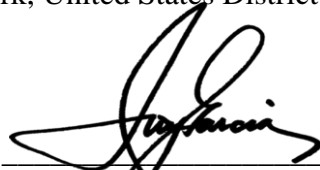
I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on October 24, 2019, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Enrique Nunes Lopez
AW4709
California Men's Colony
PO Box 8103
San Luis Obispo, CA 93409-8103

Dated: October 24, 2019

Susan Y. Soong
Clerk, United States District Court

By: 
Ivy Lerma Garcia, Deputy Clerk to the
Honorable DONNA M. RYU